

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DELVILLE BENNETT,

Plaintiff,

v.

Civil Action No.
9:09-cv-515 (GLS/DEP)

TED NESMITH, Physicians Assistant;
LESTER WRIGHT, M.D., Deputy
Commissioner and Chief Medical
Officer; and TIMOTHY WHALEN, M.D.,
Medical Provider,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

DELVILLE BENNETT
Plaintiff, *Pro Se*
98-A-1110
Auburn Correctional Facility
P.O. Box 618
Auburn, New York 13021

FOR THE DEFENDANTS:

HON. ANDREW M. CUOMO
Attorney General of the
State of New York
The Capitol
Albany, New York 12224

MICHAEL G. MCCARTIN, ESQ.
Assistant Attorney General

GARY L. SHARPE,
U.S. DISTRICT JUDGE

ORDER

The above-captioned matter comes to this court following a Report-Recommendation by Magistrate Judge David E. Peebles, duly filed April 6, 2010. Following ten days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the Magistrate Judge's Report-Recommendation for clear error, it is hereby

ORDERED, that the Report-Recommendation of Magistrate Judge David E. Peebles filed April 6, 2010 (Dkt. No. 30) is ACCEPTED in its entirety for the reasons state therein, and it is further

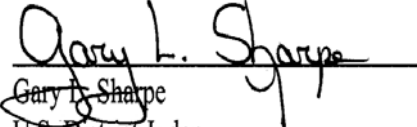
ORDERED, that defendant Wright's motion to dismiss (Dkt. No. 17) is GRANTED and plaintiff's complaint is dismissed in its entirety as against Dr. Wright, except to the extent plaintiff seeks injunctive relief against him in his official capacity; and it is further

ORDERED, that the plaintiff is granted leave to amend the complaint in which such pleading shall be filed within (30) thirty days of this order, and it is further

ORDERED, that the Clerk of the court serve a copy of this order upon the parties in accordance with this court's local rules.

IT IS SO ORDERED.

Dated: May 11, 2010
Albany, New York



Gary L. Sharpe
U.S. District Judge